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No. 97-1121

In the Supreme Court of the United States

OCTOBER TERM, 1997

CITY OF CHICAGO, PETITIONER

v.

JESUS MORALES, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTIONS PRESENTED

1. Whether a loitering ordinance making it a misdemeanor to disobey a police order to move on, given when a police officer has reasonable cause to believe that a group of loiterers contains one or more members of a criminal street gang, is impermissibly vague on its face in violation of the Due Process Clause.

2. Whether petitioner's ordinance, which requires a group of loiterers containing one or more criminal street gang members to obey a police order to move on, violates substantive due process guarantees.

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INTEREST OF THE UNITED STATES

The federal government has identified the control of gang-related crime and violence as an important priority. For example, in 1995, the Department's Office of Community Oriented Policing Services funded an Anti-Gang Initiative, which awarded $11 million in grants to a number of cities (including Chicago) to pursue various locally developed anti-gang strategies.[1] The Federal Bureau of Investigation has developed a National Gang Strategy for working with state and local governments to identify gang problems and to employ the anti-gang resources of each level of government in a coordinated and effective manner.[2]

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[1] Office of Community Oriented Policing Services, U.S. Dep't of Justice, *COPS Office Report: 100,000 Officers and Community Policing Across the Nation* 14 (Sept. 1997).

[2] Office of Investigative Agency Policies, U.S. Dep't of Justice, *Reducing Violent Crime in America: A Five-Year Strategy* 21-22 (May 1996).

The Department of Justice operates a grant program known as "Weed and Seed" which encourages cooperation among law enforcement and other agencies in targeted areas to "weed" out gangs and others involved in violent crime and drug activity, and to "seed" the areas with resources and community development. Congress has supported local efforts to address the problem of criminal street gangs by providing for enhanced penalties when certain federal crimes are committed in connection with such gangs. 18 U.S.C. 521 (Supp. II 1996).

The Chicago ordinance at issue in this case is one of several possible approaches to the problem of gang violence. The ordinance appears to have had a significant impact on gang violence in Chicago.[3] The federal government has a strong interest in supporting the efforts of local communities like Chicago to identify the law enforcement strategies best suited to each community's needs to combat gangs and gang-related violence.

STATEMENT

This case arises from respondents' challenges to their convictions for violating the City of Chicago's gang loitering ordinance. The Illinois Supreme Court held that the

[3] According to a report published by the City of Chicago and the Chicago Police Department, enforcement of the ordinance resulted in 5251 arrests in 1993, 15,660 arrests in 1994, and 22,056 arrests in 1995. Aggravated battery with a firearm, drive-by shootings, and homicides all decreased dramatically in 1995; moreover gang-related aggravated battery with a firearm and gang-related homicide declined markedly as a percentage of the (declining) total. Gang-related aggravated batteries climbed back to their prior levels in 1996 and 1997 (though total aggravated batteries did not); drive-by shootings declined further in 1996 and began climbing in 1997; gang-related homicides increased in 1996 but declined again in 1997 (while total homicides decreased in both years). *Gang and Narcotic Related Violent Crime: City of Chicago 1993-97* (June 1998). See also Tracey L. Meares, *Social Organization and Drug Law Enforcement*, 35 Am. Crim. L. Rev. 191, 223-226 (1998) (reporting statistics and anecdotal accounts of effectiveness of ordinance from police officers and community residents).

ordinance was unconstitutionally vague on its face and violated substantive due process.

1. In May 1992 the Chicago City Council enacted a gang loitering ordinance following a series of hearings. In formal findings enacted as a preamble to the ordinance, the Council found that "the continuing increase in criminal street gang activity * * * is largely responsible for" the City's increasing rate of murder and other violent and drug-related crimes. Pet. App. 60a. The Council also found that "[i]n many neighborhoods throughout the City, the burgeoning presence of street gang members in public places has intimidated many law abiding citizens." *Ibid.* The Council found that "[o]ne of the methods by which criminal street gangs establish control over identifiable areas is by loitering in those areas and intimidating others from entering those areas." *Ibid.* Gang members "maintain[] control over identifiable areas by continued loitering," but they "avoid arrest by committing no offense punishable under existing laws when they know the police are present." *Ibid.* As a result, "loitering in public places by criminal street gang members creates a justifiable fear for the safety of persons and property in the area because of the violence, drug-dealing and vandalism often associated with such activity." *Ibid.*

The ordinance itself provides in pertinent part:

> Whenever a police officer observes a person whom he reasonably believes to be a criminal street gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section.

Pet. App. 61a. The ordinance provides that "[i]t shall be an affirmative defense to an alleged violation of this section that no person who was observed loitering was in fact a member of a criminal street gang." *Ibid.* Each violation of the ordinance is punishable by a fine of up to $500,

imprisonment for not more than six months, and performance of up to 120 hours of community service. *Id.* at 63a.

The ordinance defines each of its key terms. The ordinance provides that "'[l]oiter' means to remain in any one place with no apparent purpose." Pet. App. 61a. The definition of "[c]riminal street gang" is modeled in part upon the definition in the 1994 federal statute enhancing penalties for certain federal crimes when they are committed in connection with a criminal street gang. 18 U.S.C. 521 (Supp. II 1996). A "[c]riminal street gang" is defined as "any ongoing organization, association in fact or group of three or more persons, whether formal or informal, having as one of its substantial activities the commission of one or more [of a series of enumerated crimes], and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity." Pet. App. 61a-62a. The enumerated crimes include murder, aggravated assault or battery, intimidation, robbery and armed robbery, arson, possession of explosives, bribery, and drug trafficking. *Id.* at 62a. "Criminal gang activity" is defined as the commission or attempted commission of any of those enumerated crimes, so long as they are committed by two or more persons or by an individual acting "at the direction of, or in association with, any criminal street gang" and with the specific intent to "further[] or assist in any criminal conduct by gang members." *Ibid.* Finally, a "[p]attern of criminal gang activity" is defined as "two or more acts of criminal gang activity of which at least two such acts were committed within five years of each other and at least one such act occurred after the effective date of [the ordinance]." *Id.* at 63a.

After the City Council adopted the ordinance, the Police Department issued a general order that provided further guidance regarding the terms of the ordinance. The order provides that the ordinance "will be enforced only" within areas designated by district police commanders "in which the presence of gang members has a demonstrable effect on the activities of law abiding persons in the surrounding

community." Pet. App. 68a-69a. The general order also provides that "[p]robable cause to establish membership in a criminal street gang must be substantiated by the arresting officer's experience and knowledge" and must be "corroborated by specific, documented and reliable information." *Id.* at 67a. Such information would include items such as an individual's admission of membership, the wearing of distinctive gang insignia or colors, the use of distinctive gang signs or symbols, or the identification of an individual as a gang member by a reliable informant. *Id.* at 67a-68a. The general order provides that gang membership "may not be established solely because an individual is wearing clothing available for sale to the general public." *Id.* at 67a.

2. Respondents are 70 defendants who were charged with violating the gang loitering ordinance. Pet. App. 1a. Six of them were found guilty after separate bench trials and sentenced to jail terms from one to 27 days. *Id.* at 1a-2a. The trial courts dismissed each of the other cases, finding the ordinance unconstitutional on a variety of grounds. *Id.* at 1a. The state appellate court reversed the convictions and affirmed the dismissals. *Id.* at 2a.

3. The Illinois Supreme Court held that the ordinance "violates due process of law in that it is impermissibly vague on its face and an arbitrary restriction on personal liberties." Pet. App. 5a.

a. The court held that the ordinance is not "sufficiently defined so it provides persons of ordinary intelligence adequate notice of proscribed conduct." Pet. App. 7a. In the court's view, the term "loiter," even as defined by the ordinance to mean "to remain in any one place with no apparent purpose," is not "sufficiently definite so that ordinary persons can comprehend the prohibited conduct." *Id.* at 9a, 10a.

The court also held that the other elements of the offense do not cure the difficulty. The court construed the ordinance to include the additional element "that the arresting officer have a reasonable belief that one person in a

group of loiterers is a gang member," but concluded that this element too is vague because "[a]n individual standing on a street corner with a group of people has no way of knowing whether an approaching police officer has a reasonable belief that the group contains a member of a criminal street gang." Pet. App. 11a-12a. The court added that "even adding a knowing association with a gang member to the act of loitering is still insufficient because the city cannot 'forbid, on pain of criminal punishment, assembly with others merely to advocate activity, even if that activity is criminal in nature.'" *Id.* at 12a.

The court also held that the element of failure to obey a police dispersal order "is * * * insufficient to cure the vagueness of the ordinance." Pet. App. 12a. In the court's view, that conclusion was dictated by *Shuttlesworth* v. *City of Birmingham*, 382 U.S. 87, 90-92 (1965), in which this Court stated that a statute prohibiting standing or loitering after having been requested by a police officer to move on would be unconstitutional.

b. The court also held that the ordinance "provides such ambiguous definitions of its elements that it does not discourage arbitrary or discriminatory enforcement." Pet. App. 15a. In particular, the court believed that the definition of the term "loiter" "provides absolute discretion to police officers to decide what activities constitute loitering." *Ibid.* The court also stated that the ordinance gives police "complete discretion to determine whether any members of a group are gang members." *Ibid.* The court acknowledged that the police general order "goes to great lengths to define criminal street gangs." *Id.* at 16a. But the court stated that the general order "does absolutely nothing to cure the imprecisions of the definition of the 'loitering' element of the crime." *Ibid.*

c. With respect to the substantive due process challenge to the ordinance, the court referred to activities such as "loafing, loitering, and nightwalking," and held that "[t]he freedom to engage in such harmless activities is an aspect of the personal liberties protected by the due

process clause." Pet. App. 17a. The court stated that the gang loitering ordinance "impedes upon" a number of "protected personal liberties," including "the general right to travel, the right of locomotion, the right to freedom of movement, and the general right to associate with others." *Id.* at 18a (citations omitted). Although the court recognized that these liberties "are not absolute," the court found "that the gang loitering ordinance unreasonably infringes upon personal liberty." *Ibid.* In the court's view, "[p]ersons suspected of being in criminal street gangs are deprived of the personal liberty of being able to freely walk the streets and associate with friends, regardless of whether they are actually gang members or have committed any crime." *Ibid.*

INTRODUCTION AND SUMMARY OF ARGUMENT

The problem of gang-related crime and violence has dramatically increased in recent years. Criminal street gangs increasingly attempt to control entire neighborhoods, intimidating the law-abiding citizens who live there and making it impossible for them to enjoy the amenities of public life. Experience has repeatedly demonstrated that, once such gangs take control of the sidewalks and streets, the ordinary social mechanisms that tend to inhibit crime and other anti-social behavior cease working. Although attacking the homicides, drug crimes, and other serious crimes that gangs commit is one facet of the solution, effective efforts to combat gang activity may also require targeted community-based efforts to reacquire control of the streets from violent street gangs and restore public spaces to the use and enjoyment of the vast majority of residents. The Chicago City Council, acting with the support of community organizations and the city's police department, concluded that the ordinance adopted is the best approach to achieving that goal in the particular circumstances faced by a city that has been one of the most hard-hit by gang violence.

The gang loitering ordinance is not unconstitutionally vague. Because the ordinance applies only to those who

loiter for "no apparent purpose," it excludes from its scope those whose presence in a public place has as its purpose the expression of ideas protected by the First Amendment. Each of its key terms is carefully defined and has a meaning that is comprehensible to persons of ordinary intelligence and common sense. The term "loiter" is defined to mean "to remain in any one place with no apparent purpose." Pet. App. 61a. As we discuss below, that is not an unintelligible standard. Moreover, the ordinance imposes additional requirements for a conviction, including proof "that the arresting officer have a reasonable belief that one person in a group of loiterers is a gang member," *id.* at 11a, and—most significantly—proof that the defendant has received and disobeyed a police order to disperse. Taken together, those requirements are sufficient to give fair notice to persons subject to the ordinance how they may conform their conduct to the law.

The ordinance also contains standards that satisfactorily confine police enforcement discretion. It does not permit police to sweep the streets of persons whom they find undesirable or annoying, or to remove minority or disfavored groups from the City. Instead, in light of the careful definition of each of its terms and the further requirements in the general police order, it permits the police to apply the ordinance only in areas where gang activity has threatened the local community and only against persons who, by virtue of their membership in criminal street gangs or their participation in groups containing such members, pose a particular threat to the community. Even as to such persons, the ordinance simply prohibits them from loitering in groups, and it authorizes arrests only of individuals who disobey police orders to disperse. In short, the ordinance provides far more notice and precise standards for enforcement than did the standardless ordinances this Court found unconstitutionally vague in *Papachristou* v. *City of Jacksonville*, 405 U.S. 156 (1972), and *Coates* v. *City of Cincinnati*, 402 U.S. 611 (1971), or the ordinance that this Court commented would be unconstitutional in *Shuttlesworth* v. *City of Birmingham*, 382 U.S. 87 (1965).

The ordinance also does not violate substantive due process guarantees. It implicates two specific liberty interests—the interest of gang members in standing in groups on the streets and sidewalks and in other public places in designated areas of the city, and the interest of non-gang members in standing in public places with gang members in those designated areas. Those interests are not commensurate with any of the fundamental liberty interests—affecting the most intimate personal relations and the core of family life—whose infringement may be justified only if narrowly tailored to serve a compelling state interest. Moreover, the City's interest in public safety, which forms a part of the justification for the ordinance, has frequently been found sufficient to justify substantially more serious intrusions on personal liberty, such as pretrial confinement on the basis of future dangerousness. *United States* v. *Salerno*, 481 U.S. 739, 748 (1987). And the specific prohibitions of the ordinance are narrowly tailored to advance the purposes of the ordinance in returning the City's public spaces to law-abiding citizens and ultimately reducing the level of crime, fear, and violence in the specific areas of the City plagued with gang violence and intimidation.

ARGUMENT

I. THE GANG LOITERING ORDINANCE IS NOT UNCONSTITUTIONALLY VAGUE ON ITS FACE

A. The Ordinance Provides Reasonable Notice, In At Least A Wide Range Of Its Applications, Of What Conduct Is Prohibited

The vagueness doctrine is based on the proposition that, "because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Grayned* v. *City of Rockford*, 408 U.S. 104, 108 (1972).

Laws that fail to provide that kind of notice "may trap the innocent by not providing fair warning," *ibid.*, and they therefore fail to satisfy due process standards.

The fact that a law has some imprecision, however, is not sufficient to render it unconstitutional. "Condemned to the use of words, we can never expect mathematical certainty from our language." 408 U.S. at 110. Moreover, the fact that the terms used in a statute have uncertain application to some conceivable conduct is insufficient to support a ruling, like that of the Illinois Supreme Court in this case, that the statute is unconstitutional on its face. Instead, under well-settled standards, facial invalidation is permissible only if the challenged law is "impermissibly vague in all of its applications." *Village of Hoffman Estates* v. *The Flipside, Hoffman Estates*, 455 U.S. 489, 497 (1982). If the challenged law imposes reasonably intelligible standards in some factual settings, the law may constitutionally be applied in those settings; vagueness questions that arise in other settings should be resolved if and when cases involving as-applied claims in those settings arise. See, *e.g.*, *Maynard* v. *Cartwright*, 486 U.S. 356, 361 (1988) ("Objections to vagueness under the Due Process Clause rest on the lack of notice, and hence may be overcome in any specific case where reasonable persons would know that their conduct is at risk."); *United States* v. *Powell*, 423 U.S. 87, 92-93 (1975); *United States* v. *Mazurie*, 419 U.S. 544, 550 (1975).

1. Although the vagueness doctrine in general imposes only a modest restriction on the framing of criminal laws, "a greater degree of specificity" is required where the challenged law regulates expressive conduct protected by the First Amendment. *Smith* v. *Goguen*, 415 U.S. 566, 573 (1974). Such laws require special treatment to avoid a chilling effect on expression that may be close to the line of illegal conduct. See *Village of Hoffman Estates*, 455 U.S. at 499; *Grayned*, 408 U.S. at 109.

The Chicago gang loitering ordinance does not in any meaningful sense limit expression protected by the First

Amendment and is therefore not subject to this more stringent test. If a group of people standing in a public place are engaged in expressive conduct protected by the First Amendment, such as picketing, holding a demonstration, campaigning for a candidate, or gathering signatures on a petition, the group's message—and its purpose of conveying that message—will be apparent to outsiders. The ordinance's definition of "loiter," however, applies only to those who are standing in a public place "with no apparent purpose." Pet. App. 61a. Therefore, the ordinance by its terms does not apply to those who are gathered for the purpose of engaging in protected expression.

Nor does the gang loitering ordinance limit the freedom of association. In *Roberts* v. *United States Jaycees*, 468 U.S. 609 (1984), this Court explained that two different sorts of freedom of association have received constitutional protection. One sort relates to "choices to enter into and maintain certain intimate human relationships," *id.* at 617, which generally involve "the creation and sustenance of a family" through "marriage, childbirth, the raising and education of children, and cohabitation with one's relatives," *id.* at 619 (citations omitted). Those rights, which are protected as "fundamental element[s] of personal liberty" protected by the Due Process Clause, *id.* at 618, are not implicated by the gang loitering ordinance.

The other sort of conduct that comes within the freedom of association involves "a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion." 468 U.S. at 618. The Illinois Supreme Court correctly stated that the government may not "forbid, on pain of criminal punishment, assembly with others merely to advocate activity." Pet. App. 12a (citing, *inter alia*, *Brandenburg* v. *Ohio*, 395 U.S. 444, 448-449 (1969)). But the gang loitering ordinance, as noted above, does not forbid such assembly, because those exercising this right of assembly have expressive activ-

ity—advocacy—as their purpose. The ordinance, by contrast, prohibits only association "with no apparent purpose." The First Amendment does not include "a generalized right of 'social association' that includes chance encounters," *City of Dallas* v. *Stanglin*, 490 U.S. 19, 25 (1989), and the ordinance therefore is not subject to the heightened review for vagueness applicable to laws that affect First Amendment rights of expression.[4]

2. a. Under ordinary vagueness standards, the ordinance is constitutional. The ordinance defines the term "loiter" to mean "to remain in any one place with no apparent purpose." That is not an unintelligible standard. As the Illinois Supreme Court indicated, application of the ordinance does not turn on the actual purpose of the group of suspected gang loiterers, but whether that purpose is "apparent to an observing police officer." Pet. App. 10a. Moreover, the terms of the ordinance suggest that the "apparent purpose" inquiry is based on the apparent purpose for "remain[ing] in any one place." Thus, a group that is talking or smoking while remaining in one place would not ordinarily have an apparent purpose, since it would rarely be apparent to an observer that the group's purpose for remaining in that place—rather than walking or moving elsewhere—was to talk or smoke.[5] Finally, the purpose simply to stand on a corner cannot be an "apparent

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[4] In the Illinois Supreme Court, respondents argued that the ordinance impinged on protected expression because those subject to the ordinance may be talking while they are loitering. See Defendants-Appellees Ill. Sup. Ct. Br. 13-14. The ordinance, however, does not prohibit or regulate talking. It merely requires those loitering with criminal street gang members to move on when ordered to do so.

[5] It is a factual question in each case whether a group has an apparent purpose for remaining in one place. In some circumstances it may be apparent that a group's purpose for remaining in one place is to smoke cigarettes—for example, where the group is smoking during business hours outside an office building in which smoking is known to be prohibited. Far from suggesting that the ordinance is vague, such examples demonstrate that the standard embodied in the ordinance may be intelligibly applied to a variety of factual circumstances.

purpose" under the ordinance; if it were, the ordinance would prohibit nothing at all.

In accordance with those standards, the statutory term "loiter" would likely include standing on a street corner or in front of a school or business and making no effort to enter a building or to engage in conduct conveying a message. On the other hand, the statutory term would not likely include attending a sporting event, waiting in line to enter a theater, or waiting at a bus stop until a bus arrives.[6] The term "loiter" thus has a core meaning that distinguishes proscribed from permitted conduct.

In each of the four full trials conducted below, the "no apparent purpose" issue was resolved as a straightforward question of fact, insofar as it was litigated at all.[7] In each case a police officer testified that he had observed the respondent standing in one place with no apparent purpose for a period of time.[8] Three of the respondents testified, to the contrary, that they were arrested while they were walking to another location; the fourth did not testify or put on any evidence on the issue.[9] The trial court credited

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[6] Contrary to the suggestion of the Illinois Supreme Court, Pet. App. 10a, the purpose of "a person waiting to hail a taxi, resting on a corner during a jog, or stepping into a doorway to evade a rain shower" will ordinarily be apparent to an observer.

[7] The other two cases that resulted in convictions were tried on stipulated facts or stipulated testimony, which addressed this issue in conclusory terms. See Br. for Defendant-Appellant at 3, *Chicago* v. *Garvin*, No. 93-4356 (Ill. App. Ct, 1st Div.) (stipulated testimony that defendant was loitering); Br. for Defendant-Appellant at 3, *Chicago* v. *Jimenz*, No. 93-4351 (Ill. App. Ct., 1st Div.)(stipulated that defendant "knowingly remained at a known designated location for criminal street activity, after being informed by a police officer to disperse from this area.").

[8] *Chicago* v. *Gutierrez*, 4/12/94 Tr. 12, 15-16, 18-19; *Chicago* v. *Morales*, 9/20/93 Tr. 6-11; *Chicago* v. *Washington*, 7/14/94 Tr. 9-11, 17-19; *Chicago* v. *Renteria*, 9/29/94 Tr. 16-19, 21-24.

[9] One respondent claimed that he was walking to meet his mother. *Chicago* v. *Gutierrez*, 4/12/94 Tr. 24-29. Another claimed that he was walking home from the hospital. *Chicago* v. *Morales*, 9/20/93 Tr. 17-18. A third said he was walking out of a store to rejoin a friend who had

the officer rather than the testifying defendants, indicating that if it had credited the defendants it would have acquitted them.[10] The experience in trying cases under the ordinance thus shows no confusion or dispute about what constitutes an "apparent purpose," and shows that the term "loiter" has a core meaning that is sufficient to preclude a facial vagueness challenge. Possible unconstitutional applications, or questions about the interpretation of the ordinance's standard at the margins, should be resolved on an as-applied basis.

A comparison with the ordinance this Court held unconstitutionally vague in *Coates* v. *City of Cincinnati*, 402 U.S. 611 (1971), is instructive. The operative language in the ordinance in *Coates* prohibited three or more people from assembling on a sidewalk and "conduct[ing] themselves in a manner annoying to persons passing by." *Id.* at 611. Noting that "[c]onduct that annoys some people does not annoy others," *id.* at 614, the Court explained that therefore rather than "requir[ing] a person to conform his conduct to an imprecise but comprehensible normative standard, * * * no standard of conduct is specified at all." *Ibid.* Unlike the ordinance in *Coates*, the term "loiter" in the Chicago gang loitering ordinance does specify a standard of conduct. At least in combination with the other requirements of the ordinance, it is not unconstitutionally vague.

b. The Illinois Supreme Court acknowledged that "persons of ordinary intelligence may maintain a common and accepted meaning of the word 'loiter.'" Pet. App. 9a. But the court stated that "such term by itself is inadequate to inform a citizen of its criminal implications." *Ibid.* In the court's view, "[t]he infirmity" of the use of the

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waited outside with a group of others. *Chicago* v. *Washington*, 7/14/94 Tr. 28-31. A fourth, Jose Renteria, did not testify, and did not otherwise claim that he had an apparent purpose in standing on the street.

[10] *Chicago* v. *Gutierrez*, 4/12/94 Tr. 32; *Chicago* v. *Morales*, 9/20/93 Tr. 22-23; *Chicago* v. *Washington*, 7/14/94 Tr. 35; *Chicago* v. *Renteria*, 9/29/94 Tr. 36.

term "is that it fails to distinguish between innocent conduct and conduct calculated to cause harm and 'makes criminal activities which by modern standards are normally innocent.'" *Ibid.* (quoting *Papachristou* v. *City of Jacksonville*, 405 U.S. 156, 163 (1972)). Even as defined by the ordinance, the court held, "[p]eople with entirely legitimate and lawful purposes will not always be able to make their purposes apparent to an observing police officer." *Id.* at 10a.

The Illinois Supreme Court's reasoning is unsound. It is not the task of a court, in adjudicating a vagueness challenge to a statute, to determine whether the statute criminalizes only "conduct calculated to cause harm." It is up to the legislature to determine what conduct is likely to cause harm in a given community, and the City Council's determination that gang loitering is likely to cause harm in Chicago was fully supported by the record and should be conclusive. Nor does the constitutionality of an ordinance depend on whether it "makes criminal activities which by modern standards are normally innocent." Social problems—and tolerance of disorder—vary among different communities and even in the same community at different times. It is a part of the substantive due process inquiry, see pp. 22-30, *infra*, to determine whether a particular prohibition falls within a community's wide discretion to subject particular conduct to the sanctions of the criminal law. Judicial second-guessing of a community's determinations regarding conduct that should be criminalized is not, however, a part of the vagueness inquiry. If conduct is adequately defined in a criminal statute to give fair notice and avoid standardless discretion, the fact that it is "by modern standards * * * normally innocent," *Papachristou*, 405 U.S. at 153, is "not a defect of clarity." *Village of Hoffman Estates*, 455 U.S. at 497 n.9.

3. Conviction under the ordinance requires not only proof of loitering, but also proof of other requirements as well. The addition of those elements is sufficient to satisfy fair notice requirements, regardless of any indeter-

minacy that may inhere in the term "loiter," as defined by the ordinance.

a. As the Illinois Supreme Court recognized, proof of a violation of the ordinance requires proof "that the arresting officer have a reasonable belief that one person in a group of loiterers is a gang member." Pet. App. 11a. In at least a great many cases, persons subject to the statute can be expected to know whether they are loitering with gang members and whether the police officer issuing the order has a reasonable belief that gang members are present. Indeed, because it is important to the gang to assume visible control over an area, members of gangs often wear distinctive clothing, colors, and insignia, and employ distinctive hand signals;[11] and they frequently freely admit to their membership in the gang.[12] The intimidating effect of gang loitering—one of the primary evils against which the ordinance was directed—results precisely because gang members and affiliates loitering in public places make their status as gang members clear to onlookers. In addition, the gang's recruiting function—also a target of the ordinance—depends on easy recognition of the gang affiliation of a group of loiterers. See *id.* at 2a (City Council heard testimony that "gang members loiter as part of a strategy to claim territory, recruit new members, and in-

[11] In three of the four full trials resulting in convictions below, the police officers testified that respondents and/or others in the group with which they were loitering admitted gang membership. See *Chicago* v. *Gutierrez*, 4/12/94 Tr. 11-12; *Chicago* v. *Morales*, 9/20/93 Tr. 7; *Chicago* v. *Washington*, 7/14/94 Tr. 10, see also *id.* at 4. In the fourth case, although the police officer did not testify to an admission by the defendant himself, the officer stated that gang members "admit they are gang members and they are very proud of it." *Chicago* v. *Renteria*, 9/29/94 Tr. 13; see also *id.* at 11 (gang members "readily admit" membership).

[12] As a recent monograph published by a Department of Justice component noted in its definition of "street gang," "[t]he group frequently identifies with or claims control over specific territory (turf) in the community, wears distinctive dress and colors, and communicates through graffiti and hand signs." Bureau of Justice Assistance, *Urban Street Gang Enforcement* 30 (1997).

timidate rival gangs and ordinary community residents."). Accordingly, individuals may in most cases readily determine whether they are engaging in gang loitering subject to the ordinance.[13]

b. The ordinance also requires proof that the defendant failed to obey a police order to disperse. Even if fair notice were a close question based on the other requirements of the statute, this element would be sufficient to cure any problem. A person of ordinary intelligence and common sense who receives a police order to disperse under the ordinance should be in no doubt about "what is prohibited" and should easily be able to "act accordingly." *Grayned*, 408 U.S. at 108. Criminal statutes ordinarily are enforced with far less specific notice than occurs under the Chicago gang loitering ordinance. A person who fails to obey a police order to disperse under the ordinance cannot complain of lack of fair notice.

This Court's decision in *Colten* v. *Kentucky*, 407 U.S. 104 (1972), makes clear that the Chicago ordinance provides fair notice. In *Colten*, the statute under challenge prohibited "[c]ongregat[ing] with other persons in a public place and refus[ing] to comply with a lawful order of the police to disperse," when done "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof." See *id.* at 108. This Court rejected the

[13] There may be cases in which a defendant can show that he had no way to determine whether or not a police officer could have had a reasonable belief that a gang member was present in a group of loiterers. If such a case arises, the question presented would be whether the other requirements of the statute—especially the requirement of an order to move on—were sufficient to have given the defendant "a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Grayned* v. *City of Rockford*, 408 U.S. 104, 108 (1972). Regardless of the answer to that question, the existence of some such cases would not render the statute unconstitutionally vague on its face—*i.e.*, incapable of application even where the gang affiliation of members of a group of loiterers is in no way unclear. Cf. *Parker* v. *Levy*, 417 U.S. 733, 756 (1974) ("One to whose conduct a statute clearly applies may not successfully challenge it for vagueness.").

defendant's argument that the statute did not provide fair notice, explaining that a person who satisfies the other elements of the statute "should understand that he could be convicted under [the statute] if he fails to obey an order to move on." *Id.* at 110. The ordinance in this case requires the same police dispersal order as in *Colten*. Accordingly, as in *Colten*, "citizens who desire to obey the statute will have no difficulty in understanding it." *Ibid.*

The Illinois Supreme Court ignored *Colten* in its analysis of fair notice. Instead, that court relied on *Shuttlesworth* v. *City of Birmingham*, 382 U.S. 87, 90 (1965), in which this Court noted that an ordinance that, without more, made it "unlawful for any person to stand or loiter upon any street or sidewalk . . . after having been requested by any police officer to move on" would be unconstitutionally vague. The Illinois Supreme Court stated that "[t]he proscriptions of the gang loitering ordinance are essentially the same as the *Shuttlesworth* ordinance" and relied upon *Shuttlesworth* for the principle that "if the underlying statute is itself impermissibly vague, * * * then a conviction based upon failure to obey the order of a police officer pursuant to that statute cannot stand." Pet. App. 13a.

The Chicago gang loitering ordinance is not "essentially the same" as the ordinance in *Shuttlesworth*. The ordinance in *Shuttlesworth*, "[l]iterally read, * * * says that a person may stand on a public sidewalk in Birmingham only at the whim of any police officer." 382 U.S. at 90. That, together with the ordinance's "ever-present potential for arbitrarily suppressing First Amendment liberties," *id.* at 91, was the basis for this Court's ruling. In contrast, the Chicago gang loitering ordinance, especially together with the accompanying police order, has extensive definitions of its key terms that very substantially limit police discretion, see pp. 19-20, *infra*, and it does not substantially affect expressive activities protected by the First Amendment.

Shuttlesworth does not, as the Illinois Supreme Court stated, stand for the principle that a police order requirement can never help to cure a statute that might otherwise be impermissibly vague; at most it condemns a hypothetical statute that penalizes violation of a police order alone, without any standards to guide the issuance of the order. 382 U.S. at 90-91. The Chicago ordinance, however, contains both a requirement of a police order, and standards for issuing the order. In combination, these two elements save the statute from vagueness, whether or not either one alone would suffice. A statute taken as a whole may provide fair notice despite the fact that some of its elements, taken alone, fail to do so—and this is so even where the statute regulates expression, and is therefore subject to particularly stringent vagueness requirements. *Reno* v. *ACLU*, 117 S. Ct. 2329, 2345 (1997) ("Just because a definition including three limitations is not vague, it does not follow that one of those limitations, standing by itself, is not vague."). Similarly here, the ordinance as a whole—including in particular the police order requirement—provides fair notice of the conduct that it prohibits, so that individuals may conform their conduct to law.

B. The Ordinance Does Not Encourage Arbitrary And Discriminatory Enforcement

The "more important aspect of the vagueness doctrine" is "the requirement that a legislature establish minimal guidelines to govern law enforcement." *Kolender* v. *Lawson*, 461 U.S. 352, 358 (1983). The ordinance satisfies that requirement.

1. As noted above, the key terms in the statute are carefully defined. The ordinance provides that individuals may be asked to move on only based on a reasonable belief that they are "loitering"—a defined term whose meaning has already been discussed—with one or more persons, at least one of whom is reasonably believed to be a gang member. A "gang" is defined as a group of three or more persons that has "as one of its substantial activities" the commission of enumerated serious criminal offenses, and

whose members commit, attempt to commit, or solicit the commission of those offenses, provided that they are committed "with the specific intent to promote, further, or assist in any criminal conduct by gang members." Pet. App. 61a-62a. That definition substantially limits police discretion. In precise terms, it aims the statute's prohibitions at those who choose to affiliate with criminal organizations. Even as to those persons, it may not be used simply to arrest all members of such organizations, but simply requires them to move on when ordered to and continue their activities—whatever they may be—without loitering. Cf. *Lanzetta* v. *New Jersey*, 306 U.S. 451 (1939) (holding unconstitutionally vague a statute making it a crime to be a gang member who has no occupation and has been convicted of a prior offense).

The Chicago ordinance does not suffer from the vices of the ordinance before this Court in *Papachristou* v. *City of Jacksonville*, 405 U.S. 156, 156-157 n.1 (1972). That ordinance included a list of crimes—including nightwalking, wandering about from place to place without any lawful purpose or object, loafing, living upon the earnings of one's wife—that was "so all-inclusive and generalized" that "those convicted may be punished for no more than vindicating affronts to police authority." *Id.* at 166-167. The fact that in *Papachristou* there were "no standards governing the exercise of the discretion granted by the ordinance," *id.* at 170, permitted police in effect to criminalize the failure by disfavored groups "to comport themselves according to the lifestyle deemed appropriate by the Jacksonville police and the courts." *Ibid.* By contrast, no one is guilty of a crime under the Chicago ordinance merely because of lifestyle, and even those subject to the act are not made criminals, but are merely required to disperse when requested to do so by police under the ordinance.

2. This Court has frequently considered administrative enforcement guidelines in evaluating vagueness claims. For example, in *Village of Hoffman Estates*, the Court relied in part on "guidelines prepared by the Village

Attorney," 455 U.S. at 492-493 & n.3, in holding that the terms in a local drug paraphernalia ordinance were not unconstitutionally vague. *Id.* at 500-501 & n.18; see also *id.* at 504 ("The village may adopt administrative regulations that will sufficiently narrow potentially vague or arbitrary interpretations of the ordinance.").[14]

The police order in this case further limits the discretion granted the police. First, the general order provides that the ordinance "will be enforced only" within areas designated by district police commanders "in which the presence of gang members has a demonstrable effect on the activities of law abiding persons in the surrounding community." Pet. App. 68a-69a. The order therefore limits the enforcement of the ordinance to specific areas of the city in which gang loitering poses a present threat and in which reasonably thorough and nondiscriminatory enforcement is a practical, achievable goal. That in itself vitiates the possibility that the ordinance could be used as a general license to trap or harass disfavored individuals throughout the city.

Second, the general order includes detailed instructions concerning how police officers may establish that an individual is a gang member. The order provides that such membership "must be substantiated by the arresting officer's experience and knowledge" and must be "corroborated by specific documented and reliable information." Pet. App. 67a. The order goes on to detail the types of information that would be sufficient in this regard (*e.g.*, an individual's admission of membership, the wearing

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[14] See also *Kolender* v. *Lawson*, 461 U.S. 352, 355 (1983) (court must "consider any limiting construction that a state court *or enforcement agency* has proffered") (emphasis added); *Parker* v. *Levy*, 417 U.S. 733, 754 (1974) ("[E]ven though sizable areas of uncertainty as to the coverage of the articles may remain after their official interpretation by authoritative * * * sources, further content may be supplied even in these areas by less formalized custom and usage."); *Ehlert* v. *United States*, 402 U.S. 99, 105, 107 (1971) (relying on "reasonable, consistently applied administrative interpretation" and "letter included in the briefs" from administrative authorities regarding "present practice").

of distinctive gang insignia or colors, the use of distinctive gang signs or symbols, or the identification of an individual as a gang member by a reliable informant, *id.* at 67a-68a), as well as some types of information that would be insufficient (*e.g.*, the wearing of "clothing available for sale to the general public," *id.* at 67a).

Taken together, the definition of the key terms in the ordinance itself and the further specifications in the police general order limit the enforcement discretion of police officers well within reasonable standards. The ordinance therefore does not suffer from the defect of the statute held unconstitutional in *Kolender*, which required individuals to provide "credible and reliable" identification to police officers on request, and which "contain[ed] no standard for determining what a suspect has to do in order to satisfy [that] requirement." 461 U.S. at 358. The ordinance also does not remotely resemble the wide-ranging ordinances that delegated virtually standardless discretion to the police in *Papachristou*, *Coates*, or *Shuttlesworth*, to stop and/or arrest anyone they wished.

II. THE CHICAGO GANG LOITERING ORDINANCE DOES NOT VIOLATE SUBSTANTIVE DUE PROCESS GUARANTEES

This Court has held that the Due Process Clause has a substantive component, which "bar[s] certain government actions regardless of the fairness of the procedures used to implement them." *County of Sacramento* v. *Lewis*, No. 96-1337 (May 26, 1998), slip op. 5. The "core of the concept" of substantive due process is "protection against arbitrary action," and against "the exercise of power without any reasonable justification in the service of a legitimate governmental objective." *Id.* at 10, 11. It "specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington* v. *Glucksberg*, 117 S. Ct. 2258, 2268 (1997) (citations and internal quotation marks omitted).

A. The Ordinance Implicates Liberty Interests

1. This Court has noted that substantive due process analysis requires "a careful description of the asserted fundamental liberty interest." *Glucksberg*, 117 S. Ct. at 2268 (internal quotation marks omitted). The Illinois Supreme Court described a number of liberty interests it believed were at stake in this case. It stated that activities such as "loafing, loitering, and nightwalking" are "amenities of American life," and "[t]he freedom to engage in such harmless activities is an aspect of the personal liberties protected by the due process clause." Pet. App. 17a (citing *Papachristou*, 405 U.S. at 164). The court also referred to "the general right to travel, the right of locomotion, the right to freedom of movement, and the general right to associate with others." Pet. App. 18a (citations omitted). In the court's view, "[t]he gang loitering ordinance impedes upon [*sic*] all of these personal liberty interests." *Ibid.*

We do not doubt that, under the Due Process Clause, individuals in this country have significant liberty interests in standing on sidewalks and in other public places, and in traveling, moving, and associating with others. But characterization of the interests at that level of generality is of limited utility in this case, because in ordinary application the gang loitering ordinance does not deprive individuals of some of those interests (*e.g.*, the interests in traveling and moving) at all, and it deprives individuals of other interests (*e.g.*, standing in public places and associating with others) only to a limited extent and only in some circumstances. Although the justifications for the gang loitering ordinance may not justify depriving all citizens of Chicago of these interests in their entirety, the justifications are sufficient to justify the ordinance's much more limited effect. Accordingly, a more tailored description of the liberty interest at stake in this case is required.

2. The Chicago gang loitering ordinance implicates two distinct liberty interests. First, it implicates the interest of gang members in standing in public places with others in areas of the City designated pursuant to the police general order; gang members who do so "with no apparent purpose" may expect to receive police orders to disperse. See Pet. App. 61a (ordinance provides that police officer observing persons engaged in gang loitering "*shall* order all such persons to disperse and remove themselves from the area") (emphasis added). Second, it implicates the interest of non-gang members in standing in public places with one or more gang members in designated areas of the City; non-gang members who do so "with no apparent purpose" are also subject to police orders to disperse.

The ordinance has a somewhat different effect on each of those liberty interests. With respect to gang members, the ordinance deprives them of a large part of their interest in standing in public places in the company of others. They may, of course, freely walk with whomever they wish.[15] They may stand wherever they wish in areas of the city not designated by the police general order. Even in designated areas, they may stand where they wish, so long as they do so alone. And they may stand in public places with individuals of their choice in designated areas, so long as their apparent purpose in doing so is not merely to loiter—*i.e.*, they may do so to attend a sporting event or concert, to exercise their First Amendment rights of expression, to wait for a taxi or bus, etc. But their ability merely to stand on the streets and sidewalks and in other public places in designated portions of the city and socialize with others is severely constricted by the ordinance.

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[15] The Illinois Supreme Court erred when it stated that "[p]ersons suspected of being in criminal street gangs are deprived [by the ordinance] of the personal liberty of being able to freely walk the streets and associate with friends." Pet. App. 18a. The ordinance does not prohibit anyone from "freely walk[ing] the streets." Its effect is limited to prohibiting standing with gang members in one place with no apparent purpose.

With respect to non-gang members, the ordinance imposes a much more limited restriction. Non-gang members may continue to stand with whomever they want, wherever they want, with one exception: they may not loiter with gang members in designated areas of the city. Of course, although that is a more limited restriction, it potentially affects a far larger number of people.

B. The Interests Supporting The Gang Loitering Ordinance Are Sufficient To Justify Its Limited Intrusion On The Identified Liberty Interests

The recognition of an interest as one encompassed within the meaning of the term "liberty" is only the first step in deciding whether a law violates substantive due process. It then must be determined, based on an objective analysis of "[o]ur Nation's history, legal traditions, and practices," *Washington* v. *Glucksberg*, 117 S. Ct. at 2268, whether the government's justifications for overriding the liberty interests at stake are sufficient. The strength of the justification that is required depends upon the nature and character of the liberty interest at stake. See *Cruzan* v. *Director, Mo. Dep't of Health*, 497 U.S. 261, 279 (1990) (liberty interest in refusing medical treatment must be balanced against the relevant state interests); *Williamson* v. *Lee Optical of Ok., Inc.*, 348 U.S. 483, 491 (1955) (state restriction affecting a person's ability to engage in a business must merely be rationally related to a legitimate government purpose); *Reno* v. *Flores*, 507 U.S. 292, 301-302 (1993) (infringement of certain fundamental liberty interests must be narrowly tailored to serve a compelling interest).

1. This Court has recognized that infringement of certain fundamental interests that go to the heart of personal privacy and autonomy may be justified only by a showing that the infringement is "narrowly tailored to serve a compelling state interest." 507 U.S. at 302; *Glucksberg*, 117 S. Ct. at 2267. Such liberty interests "include[] the rights to marry, to have children, to direct the education

and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion." *Glucksberg* at 2267 (citations omitted). The liberty interests at stake in this case do not fall within that category, and the Illinois Supreme Court did not suggest that they did.

2. That is not to denigrate the importance of the liberty interests that are at stake in this case. This Court recognized in *Papachristou* that the ability to stand on a sidewalk and meet one's friends and neighbors, or to sit on a sidewalk bench with others and watch the passing show, are "unwritten amenities [that] have been in part responsible for giving our people the feeling of independence and self-confidence, the feeling of creativity." 405 U.S. at 164. In most circumstances, the American people treasure such innocent "amenities," and the government has little occasion or basis to interfere with them.

This Court, however, has "repeatedly held that the Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest." *United States* v. *Salerno*, 481 U.S. 739, 748 (1987). In *Salerno*, that interest was found sufficient to justify a complete deprivation of liberty—pretrial detention on the basis of future dangerousness. The record in this case demonstrates that the Chicago City Council had a sufficient basis to justify the far less severe restriction on liberty in the gang loitering ordinance.

a. The Illinois Supreme Court stated that the ordinance was "arbitrarily aimed at persons based merely on the suspicion that they may commit some future crime." Pet. App. 18a. That is incorrect. The ordinance itself defines a crime based on the present threat to public order caused by gang loitering. As the Preamble to the ordinance recites, the City of Chicago was "experiencing an increasing murder rate as well as an increase in violent and drug related crimes." *Id.* at 60a. The City Council, after holding extensive hearings, determined that "the continuing increase in criminal street gang activity * * * is largely responsible for this unacceptable situation." *Ibid.* A key part of the problem was that "criminal street gangs establish control over identifiable areas * * * by loitering in those areas" and "intimidat[ing] many law abiding citizens." *Ibid.* Such loitering "creates a justifiable fear for the safety of persons and property in the area." *Ibid.* The City Council concluded that "[a]ggressive action is necessary to preserve the City's streets and other public places so that the public may use such places without fear." *Id.* at 61a.

Those findings were not only supported by the record before the City Council, but also are consistent with data gathered from many other communities. By the early 1990's, 95% of the nation's largest cities and 88% of smaller cities in the nation reported gang problems.[16] Most prevalent in areas in which the population is economically disadvantaged, criminal street gangs have attracted a growing number of young people to a life of violence and crime. A component of the Department of Justice has identified more than 23,000 youth gangs in the nation, with more than 650,000 members.[17] In 1994, criminal street gangs accounted for more than 1000 gang-related homicides in Chicago and Los Angeles alone.[18] Gang in-

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[16] Office of Investigative Agency Policies, U.S. Dep't of Justice, *Reducing Violent Crime in America: A Five-Year Strategy* 4 (May 1996).

[17] Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, *1995 Nat'l Youth Gang Survey: Program Summary* 12, 15 (1997).

[18] Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, *OJJDP Fact Sheet #72* (1997). Chicago has been particularly hard-hit by gang violence. In 1995, Chicago's total of 33,000 gang members was second only to Los Angeles among American cities. *1995 Nat'l Youth Gang Survey* at 16. In 1994, there were 240 gang-motivated homicides in Chicago, an all-time high and a five-fold increase from the number in 1987. Ill. Criminal Justice Information Auth., *Research Bulletin* 4 (Sept. 1996). Between 1987 and 1994, 138 of the 956 gang-related homicide victims were not gang members, including 12 victims age nine or younger. *Id.* at 10, 13. Of the 956 homicides, 120 were drive-by shootings. *Id.* at 18.

timidation of witnesses makes prosecution of those homicides — as well as prosecution of the numerous other serious crimes committed by street gang members—particularly difficult.

b. Faced with that threat to public safety, the City adopted a reasonable approach. Once criminal street gangs obtained control of the streets in an area, the fear and intimidation they spawned deprived law-abiding citizens of the ability to meet with friends and neighbors in public places and otherwise enjoy these amenities of American life. The City's response was to take action so that the amenities discussed in *Papachristou* could be restored to the vast majority of the citizens in the troubled areas. That end, if reached, would lead to the reestablishment of social controls in those areas and a concomitant reduction in fear, gangs, and violent crime. See Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 Colum. L. Rev. 551, 578-585 (1997) (citing sources).[19]

The ordinance's substantial intrusion on the liberty interests of gang members is justified. Under the ordinance, a "[c]riminal street gang" is a group that has "as one of its substantial activities the commission" of one of a

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[19] While the precise form of the Chicago ordinance is novel, vagrancy and loitering statutes have a long history, as the Court noted in *Papachristou*, 405 U.S. at 161-162. See also Livingston, *supra*, at 595 (citing authorities for proposition that, prior to *Papachristou*, "[m]ost states had loitering, drunk and disorderly, and vagrancy statutes, in addition to laws prohibiting breaches of the peace, disorderly conduct, and specific forms of public disorder.") (internal quotation marks omitted). While some of those statutes are unconstitutionally vague under modern standards, the ubiquitousness of such statutes shows that the history and traditions of our people do not recognize the right claimed by respondents to loiter at will, regardless of the threat to lawful community life thereby created. See *Washington* v. *Glucksberg*, 117 S. Ct. 2258, 2268 (1997) ("Our Nation's history, legal traditions, and practices * * * provide the crucial guideposts for responsible decisionmaking that direct and restrain our exposition of the Due Process Clause.") (internal quotation marks and citation omitted).

series of enumerated serious crimes, such as murder, aggravated battery, intimidation, armed robbery, arson, and drug offenses. Pet. App. 61a-62a. The members of such a gang must "individually or collectively engage in or have engaged in a pattern of criminal gang activity," requiring the commission of at least two offenses. *Id.* at 62a-63a. Criminal organizations of this sort pose a particular threat to the communities in which they operate. The City reasonably believed that denying control of the streets and public areas to gang members was an essential element of attacking that threat. The ordinance intrudes on the liberty interests of those who choose to join criminal street gangs to precisely the extent necessary to address the control of the streets by such gangs. In addition, gang members may remove this disability by discontinuing their membership in the gang.

The ordinance's somewhat lesser intrusion on the liberty interests of those who are not gang members is also justified. Their conduct is implicated only when they loiter with gang members. The City reasonably believed that, once a group of people loitering in a particular area becomes identified with a particular gang, the group itself poses the threats of intimidation of law-abiding citizens, coercive recruiting practices, inter-gang violence, and the like. Even if it were practical to identify all of the actual gang members in the group and then to require only the gang members to disperse, the City reasonably concluded that that would not solve the problem. In the eyes of onlookers—including both law-abiding citizens and rival gangs—the group's identity would persist and the threats to public safety posed by the group would persist. Accordingly, the City reasonably concluded that, where gang members loiter in a group, the group itself had to be dispersed to eliminate the threat. The ordinance is tailored to intrude upon the interests of non-gang members only to the extent necessary to accomplish that goal.[20]

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[20] In addition, the City Council was aware of the threat posed by drive-by shootings and other gang-related violence. See Pet. App. 2a

CONCLUSION

The judgment of the Illinois Supreme Court should be reversed.

Respectfully submitted.

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(City Council testimony "revealed that street gangs are responsible for a variety of criminal activity, including drive-by shootings, drug dealing, and vandalism."). As a result of that threat, anyone standing with a gang member on a street corner—especially someone who is unaware that the group contains gang members—is a potential casualty of stray fire as a result of inter-gang violence. The City has a strong interest in protecting non-gang members from such violence, and the ordinance's requirements that even non-gang members disperse when they are in a group containing gang members assists in achieving that goal.